

DISCUSSION:

BRITTANY TERRACE MOBILE HOME PARK

Brian Gilmartin, Esq. and Mr. Peter Kean appeared before the board for this proposal.

MR. PETRO: Discussion item, we have Brittany Terrace Mobile Home Park. This is just discussion, so you might as well tell us what's on your mind.

MR. KEAN: I'm here because you asked me to document to the planning board that we have approval for the whole parcel and on January 28 of this year, I wrote the Planning Board Attorney Krieger a letter with all kinds of documentation regarding copied, including copies of various board minutes and a letter to me dated final letter dated February 23, granting us final site plan approval.

MR. PETRO: For how many sites?

MR. GILMARTIN: 276.

MR. PETRO: That number actually appears in the minutes?

MR. KEAN: 276 appears, 261 appears in a different place.

MR. PETRO: Okay.

MR. KEAN: We got final site plan approval from the planning board on various occasions, first time was February 23, 1972 which predated the mobile home ordinance. Second time was, I'm sorry, first time was May 28, 1969, I apologize for the final site plan approval from the planning board, we wound up for reasons I can't explain going back to the planning board on February 23 getting final site plan approval.

MR. PETRO: Mike, obviously, he's here because you must disagree with him, otherwise you'd be issuing him permits.

MR. GILMARTIN: I don't think Mike disagrees.

MR. BABCOCK: I'm not sure I disagree, I'm saying that I don't recommend, I understand the approval, there's a lot of conditions and there was also no plan, that's my problem, there's no plan that shows where these 276 units are to be placed.

MR. PETRO: How many do you have existing, 60 or 70 you told me?

MR. KEAN: Yes and every year, we've been building, some years we skip because as you--

MR. PETRO: Is there sewer available there?

MR. BABCOCK: No, he has a system himself.

MR. PETRO: Private system?

MR. BABCOCK: Yes.

MR. PETRO: Serviced by well?

MR. KEAN: We're complying with every regulation.

MR. PETRO: The system SPDES permit and system is designed for 276?

MR. KEAN: Designed for ten thousand gallons a day.

MR. PETRO: Equals how many units?

MR. KEAN: Doesn't work that way, obviously, all the water the people use goes into the--

MR. GILMARTIN: When he exceeds--

MR. PETRO: Once you exceed the 10,000 gallons, you can't add another, your permit is no longer valid.

MR. GILMARTIN: Correct, Mike, you know--

MR. EDSALL: I don't think DEC looks at it, they have standard values for different type units and they

permit or assign so many gallons per unit to a particular unit, be it a house, be it a trailer, be it an office. I don't believe they tell you just keep building A then when you get over the 10,000 stop at that point. You may have built more than what would, the 10,000 gallon plan could handle, and what do you do, evict people. So I don't think that's the way DEC deals but I'll leave that to Mr. Kean to deal with DEC, they did say if it's so many gallons per day per unit, they'll take the 10,000 divided it by that standard number, say here's the number of units you can have unless you increase the planned capacity.

MR. KEAN: I can answer that. I called Joe Margoless (phonetic) and spoke with him, tell him we were putting water meters in and we can document, he said let us know when you get close to your capacity. Now, I didn't document that in writing, but I'm a pretty bright guy, I'm not going to run a plan, in fact, we're having an engineer now design an aeration plan to replace this. Right now, we're using about somewhere between 6,500 and 7,000 gallons of water a day so we're substantially below the capacity.

MR. PETRO: We have had a number of complaints, we being the Town and myself personally from Mr. Slesinger who lives or is a neighbor of your facility claiming that the sewer comes up out of the ground.

MR. KEAN: It's a surface sand filter, the effluent is pumped from a pumping station on to the surface of the sand filter and when septic is, the septic tank, there's no oxygen, so there's a bacteria that grows and digests everything that smells like rotten eggs. So yes, I will not deny that there's an odor on occasion, especially on a hot, muggy day, that's just the fact of life of the, in fact, McGoey, Hauser and Edsall did the design work for the subsurface to the sand filter some years back.

MR. LANDER: Why wasn't there ever a plan for 276?

MR. GILMARTIN: The plan can't be found by the Town as I understand it.

MR. LANDER: Do you have a plan?

MR. GILMARTIN: No, we don't either.

MR. KEAN: Our plans were being held, filed with the Town.

MR. EDSALL: Don't you require County Health Department approval as well?

MR. KEAN: I think after we got SPEDES permit, we have to keep the County health Department apprised of what's going on.

MR. EDSALL: Normally, the health department has plans, did they have any plans?

MR. KENS: I'm sorry, I misunderstood what you're asking.

MR. EDSALL: Normally, the health department has plans, maybe the health department has plans.

MR. LANDER: They would have the approve plan.

MR. KRIEGER: Well, there was, when I reviewed the minutes, there was a restriction that was put after the overall granting, whether it was 271 or 276, I don't remember, but something in that neighborhood in the last meeting almost as an afterthought, the then planning board authorized the applicant only to get 45 building permits until, unless they, until they can show or unless they can show that they had sewer capacity, sewage capacity to build them both at 45, unfortunately for review purposes, the planning board procedures that were then in existence were considerably less complete than is now the practice. And while it was in essence talked about in phased approval, that's the substance, it never really talked about that and never really made that a condition, it left it kind of open and so when they said that they would give the applicant permission to build 45 units then they can come back and didn't specify to whom or when or how this coming back was to happen.

MR. GILMARTIN: No, approval for 45 units was in 1969 and that was the first phase. Thereafter, in 1972, there's an approval for the 271 or the 276 units which is unrestricted subject only to the approval of the sanitary system, 45 units that were approved was an initial approval that was granted in 1969 for the first phase, thereafter, the site plan is amended and resubmitted and receives approval in '72 for the entire 271, the only condition being SPEDES permit.

MR. PETRO: Are you speaking about other permits at that time?

MR. KEAN: No, I just, we have been in Town for 37 years trying to run a good operation, I just want this thing to go away.

MR. GILMARTIN: He wants to expand the site.

MR. PETRO: Are you seeking about other permits for other pads to expand the site now?

MR. GILMARTIN: Building people, it's, we already have site plan approval.

MR. PETRO: Building permits and Mike, your department is not issuing them at this time, correct?

MR. BABCOCK: That's correct.

MR. PETRO: At this time, you're saying come here and find out first what's going on?

MR. BABCOCK: What happened was we read the information that Mr. Kean provided to us and it's somewhat confusing of exactly what happened back in 1969 and we denied his building permits based on that and we asked him to provide us with more information, actually a site plan showing where these units would be positioned. After some time, he came to the Town and went through the Town Clerk's file and came back to us and said that there is none on record and we said you need to supply us with that. Meanwhile, he came back to the planning board for his year extension and which we discussed it and you said that you were not going to

give him year a extension until we work this out. Mr. Kean came back and we discussed it and I'm not sure where we're supposed to go. He has stated that, you know, he will do a map if that's what the board is looking for. I don't know whether he's still in that feeling, he's not, he doesn't want to come here, I mean, let's put it in plain English, he doesn't want to come here and ask the board for a reapproval. He feels he's got that approval. What he'd like to do is do a map, what I understand he'd like to do and bring it to the board and say this is the map we can't find so we did a new one and this is what we want to do.

MR. GILMARTIN: Well, I don't know whether or not Peter made that agreement. I have advised him that the site plan approval I don't understand how a site plan approval can be granted unless there's a site plan, but let me just make my motion clear. Once the site plan approval is granted, that document is a Town record and it's the Town's responsibilities to maintain it. I understand that it is not here, but I'm not sure that a thorough, complete and adequate search has been made for that document in Town Hall. And I would like some kind of a certification that in fact, it does not exist before we discuss anything further. Because I think it's your, I don't mean to cast stones, but I think it's your job to have the site plan.

MR. PETRO: Andy, have you read the minutes for the meetings?

MR. KRIEGER: Yes.

MR. PETRO: And do you concur that most of what he is saying is in fact the case?

MR. KRIEGER: It's substantially correct, yes, he has approval for 276 or 1, or whatever it is.

MR. GILMARTIN: That's fine.

MR. KRIEGER: Yes, he has, I am satisfied after looking at it that were it to be submitted to a court, a court would find that he has that approval.

MR. PETRO: No more than that, that's all I want to hear. But still don't have a physical plan for the building department to go along with so we're getting back to what Brian's talking about before you decide whether or not you're going to prepare a plan, you want to us tell you that we can't find it, please prepare another one, once we agree that you have planning board approval, but we can't find the plan, you can say well, we don't want to make another plan but we do have approval.

MR. GILMARTIN: I'm not taking that position. I don't know what the position will be at that point, I'll have to discuss it with Peter. I'd like to know if he has site plan approval that he's been using for the last 28 years and he has built within that 28 year period of time before we decide to do anything that even opens the door a tiny little bit for any type of an approval process, I'd like to know that there's no way that that can be found.

MR. PETRO: In reverse to protect ourselves, I say okay, we agree that you have a planning board approval, you're going to say fine, we don't need you at all, just give us our building permits. Therefore, I'm not going to submit any plan. So what I'm trying to do, find a middle ground here for both of us to exist, get this thing done properly, I agree what you're saying once I, okay, give you a document saying look, there's a site plan but we lost it.

MR. KEAN: Let me just ask one question, what I am hearing you say all you want is a plan, you're not asking to approve the plan?

MR. PETRO: Nothing to do with an approval process, we, I'd like to see an as-built of what you already have and plan for your future pads to the 275 units that are going to be there and I would like to see descriptions on the plan referring to the SPDES permit and the gallonage and how you're going to phase that. I don't know the correct wording but basically, nothing to do with approval process, a plan for Mike to follow so when you say I'd like to do number 98, 99 and 100 and he knows and can see where they are, the size of the

pads, where they are located, you need something to go by.

MR. BABCOCK: That's correct. One other item that we talked about is that site plan approval that was granted in 1969, how many years does that continue, if he didn't build it in 1969, and he's back in 1999 to build it, how long does that site plan carry on, that's the problem. That's why I need documentation from him to support it to give him a building permit.

MR. PETRO: Okay and I think he's agreeing somewhat to that and I understand I asked the planning board attorney we can go a step further, we can get the Town attorney involved and he can get together with Brian, they can go over the entire process, we already have Andy telling us that he believes that they have a legal document saying that it is site plan that was approved by the Town, Mark, do you have a real problem with that or not?

MR. EDSALL: No, I think what you're asking for is reasonable even for Mr. Kean to build out the site and the plan, he needs to lay it out so it will help everyone, it's important that he also understands when he's going to get to the point when the existing sanitary facilities won't be able to handle anymore units so that he can plan the expansion of those and go to DEC for necessary approvals.

MR. KEAN: I wouldn't wait that long.

MR. KRIEGER: I think it would help to know, it would be a help to know where the controversy lies, if he has, he's applied for a building permit and he hasn't in fact gotten it, then his complaint is not with the planning board, it's with the Town, it's a Town agency, the building inspector works for the Town. In essence, the planning board in this case is acting for want of a better word, but like a mediator, so I would not take the position that if they were to submit a plan that they have waived any rights or claims that they may have in the event that the mediation process does not work and they are left with a dispute with the Town. The applicant of course has gotten counsel's best



advice but that's the position I would take.

MR. PETRO: I think we can get passed all of that simply by agreeing that if you prepare a plan before anymore permits are issued, that would be the only stipulation, prepare a plan for the entire 276 sites and get it to the building department, he looks at it, he sees this is what he is expected, it's what you want, show him the ones that are built, mark them off and that would be it, I would tell him now at that point, he can proceed and issue permits. So you're passed, at that point, you're right now you're passed the planning board with that statement, now you're dealing with the building department.

MR. KEAN: I gave Mike a plan for an as-built plus an additional 40 or 50 sites as the next group of sites that we're going to start working on. Can I get building permits on that plan while I have the design work done for the rest of it or am I going to jeopardize something?

MR. PETRO: Again, if you don't come in with the rest of the plan, I know what you're thinking, the only reason we can somewhat go along with that, I'll tell you the reason I'm thinking he has 10,000 gallons a day, he's using now close to 7,000 gallons, he has 70 units, so seems to me he only has another 20 or 30 units to go before he's out of sewer capacity anyway, I can't believe that he's going to build any extra pads when the sewer has nowhere to go.

MR. KEAN: I have even been talking to George Meyers over the past year, couple years ago, can I build a line from Brittany Terrace right down Station Road and tie in with Beaver Dam, he kept saying wait until something happens to Stewart, we expand the plant.

MR. PETRO: That's all in process so--

MR. BABCOCK: I'm going to refer to the Town Attorney, that's basically what you're saying is give it back to me, if I can give him permits right now, no, and he can apply for them, I'll give them to Phil and let Phil and his attorney work it out, I'm not going to get

involved, if Phil says it's fine, then it's fine.

MR. PETRO: You're doing it twice, Andy's telling us it's okay. I mentioned Phil, if we had to go that route, if you feel more comfortable with Phil reviewing the same.

MR. BABCOCK: I'm not saying I don't feel comfortable with Andy's decision, what the problem is I am not going to give him a building permit, I'm not going to give him a building permit until either--

MR. PETRO: He says he gave you a plan.

MR. BABCOCK: It's what he already did or what he wants to do, I don't know whether it's in conformity of what he has an approval for.

MR. PETRO: We only have a description of an approval, no matter what the drawings say, you can say I don't know what the minutes are saying that's not what the minutes mean, he can draw ten different plans, you can say none of them are right, I'm not saying you're doing that, I'm just giving you--

MR. KEAN: Mike, you have been out there?

MR. BABCOCK: I have no problem with it, it's probably one of the nicest parks in the community but the problem is is that I don't have any documentation that I believe he's proven to me to get a building permit.

MR. GILMARTIN: The only documentation that you will accept will be what?

MR. BABCOCK: Whatever Phil Crotty wants.

MR. KRIEGER: The reason that the building inspector talks about the Town Attorney, Town Attorney's approval is probably taking off from what I said, ultimately, the dispute is between the owner and the Town, it's the Town that decides to issue the building permit, the planning board decides whether or not to approve the site plan, but once one has been approved, it's not properly before the planning board, it's the Town

Attorney and so that, the building inspector would not be justified legally in relying on my instructions.

MR. PETRO: Before I lose my train of thought, here's the standards we're going to take as far as planning board is concerned. We feel that you have an approval. From this point on, how you proceed from the approval process being you don't have a plan with the building department and the Town is between the Town Attorney, you and the building department. In my opinion, I would suggest to you and the Town that you devise an entire plan for the entire site, submit it to the building inspector for a review and the Town Attorney and go from there so you can build your sites. Did I make myself clear?

MR. GILMARTIN: I can represent to the Town Attorney that the planning board has expressed its view that Brittany Terrace has a valid site plan approval for 271 or 276 units.

MR. PETRO: That's correct, that's what I just stated in the minutes, how you proceed from this point, I don't know or in my opinion, I would say it's between Mr. Babcock, Mr. Crotty and yourself. My theory on how to do that was to come up with a full plan and submit it to the building department for his okay and move on, something that he can say look, I see what you're doing, let's move on.